Appendix "A"

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FIRST TENNESSEE BANK

V.

LOUISE C. SMITH, ET AL

CIVIL ACTION NO. C-78-2610

RULING OF THE COURT
December 15, 1978

THE COURT: The sort of whirl-wind approach that the Court has been subjected to in this phase of the law has caused the Court to learn a lot but maybe not enough about this topic.

I am persuaded that this dispute was a proper topic for an interpleader. I think that the parties are adverse claimants because the estate taxes were paid with assets that apparently would render the estate insolvent if they are not allowed in Arkansas. And the only way to do that would be to go against the land.

I regret that the bank didn't at some point much earlier say "Here are all the assets, I will pay them into some appropriate interpleader court or bond." And let the bank by agreement continue to administer the assets, or protect them so they earn money. But that wasn't done.

The most troublesome phase of this is whether or not

the bank waited too late after they liquidated to assess in the respective states.

I am going to hold that the bank did not wait too late, and that this is an appropriate means of putting together the adverse claims of who should bear the brunt of these taxes.

Now, unfortunately this brings to bear all the knotty problems that have been alluded to in these remarks this morning, the fact that the Arkansas beneficiaries went to Mississippi, and the fact that Mississippi has such an unusual procedure in my opinion — they ignored domicile.

Then we have the awkward problem of the Bank's conduct on the way they handled it, which may or may not be ultimately fatal to their position.

But I am prepared to hold that this is an interpleader dispute that the Defendants should respond to.

Now, in order to preserve what I believe I need to do with regard to this Court's jurisdiction, I am going to issue a Preliminary Injunction against the Judges who are named as Defendants preliminarily. I believe that can be done, although I don't believe we can issue a final injunction against them. And I will enjoin the parties from taking steps to close these estates.

I am not going to order anybody to pay any money. In the first place, I don't know who I would order to do it.

I don't know ultimately the position of which state will prevail, or how we will go about it, but I do believe that the Supreme Court of the United States in its rulings has indicated that interpleader is an appropriate vehicle where you have inconsistent judgments from the states. And I

think the authorities also have recognized that in the area of estates that when there is an apparent inconsistency that it should be brought to the attention of an interpleader court.

Now I am not directing that this be done, but if the Court is wrong, and I am very much concerned about whether we waited too late with the bond and all the other things, this preliminary injunction or the issuance of it can be appealed at this time. Now, counsel might want to give some consideration to that because if the Court is in error about whether or not we should have the interpleader we ought to learn about it before you all start digging into all these things about who was in Mississippi and who didn't go to Arkansas, and that is a real law school exam situation.

I don't believe that the last judgment in time is that simple in this case. It may be. But the more I hear our good friends from Mississippi talk the more persuasive they are, and when the Arkansas lawyers are on their feet they are persuasive.

The thing that has persuaded me to go this route is that I have become persuaded that some court has to be available to resolve this matter.

As I say, I wouldn't have had any trouble if they had come in when the will was probated in Arkansas, or a number of stages in here where it would have been much better. But the Bank's lawsuit is no better or worse than the predicament they were in, and I don't think the issues of the Temporary Restraining Order had that much to do with it, because they were already on a supersedeas bond over there, and even if we postponed it, ultimately there was going to be a collection on it.

I will overrule the motion of the two sets of Defendants. Then if they want to appeal that they can do so.

I would like for Mr. Speer and his entourage there to prepare some necessary findings, he has been the one that has spoken up more about it and I think it will be less trouble for him. I reserve the right to change it. But I would ask him to do that promptly. It should make reference to these things and show what is in the record.

I would like him to submit that, and send opposing counsel a copy, and I would like him to do that promptly next week and I will take a look at it.

I don't intend to have another hearing on it, but if counsel want to supplement the record or something like that I will consider it. I intend to try to get it signed and filed, and I urge you to give serious thought to appealing this. I could be entirely wrong about the interpleader. The bank has enough of its money in it that I am not too concerned about the bond.

We will have another hearing if there is another application for another type injunction, but I am not going to order anybody to pay any money, or restrain the use of the land.

MR. DUNBAR: May I ask —?

THE COURT: Yes.

MR. DUNBAR: So I will understand clearly what Your Honor has directed Mr. Speer to do, we are looking toward some sort of agreement for the evidence so that on the appeal the Appellate Court will have the same benefit of what we have had in Chambers and what Your Honor has said?

THE COURT: It should be confined to what is in the record.

You can refer to the figures that were testified to, but it should refer to exhibits to the pleadings and matters of that sort. Then if it is wrong and if you get in the Appellate Court then in your tactful way you can say how ridiculous it was for the Judge to waste your findings. I don't want this to be an argument, I want this to be factual.

NO. 79-1141
NO. 79-1142

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FIRST NATIONAL BANK N.A. MEMPHIS,
Executor of the Estate of Lula S. Torian

Plaintiff-Appellee

vs.

LOUISE CRUM SMITH, RALPH CRUM, JAMES CRUM, F. BATES SULLIVAN, C. H. SULLIVAN, JR., LOUISE SULLIVAN JENNINGS, VIRGINIA SULLIVAN McDANIELS, FRANCES SULLIVAN RICE, through her co-guardians F. BATES SULLIVAN and VIRGINIA SULLIVAN McDANIELS and CHARLOTTE GIBSON (79-1141)

DOROTHY HOPE SULLIVAN, WARREN SULLIVAN and DAVID SULLIVAN (79-1142)

Defendants-Appellants

BEFORE: LIVELY and JONES, Circuit Judges; and GORDON,* Senior District Judge.

ORDER

This matter is before the court on appeal from two interlocutory decisions of the district court. The district court denied motions of the defendants to dismiss this action under the Interpleader Act, 28 U.S.C. §1335, and made the certification required by 28 U.S.C. §1292(b) for an immediate appeal. In the same order the district court granted to

*The Honorable James F. Gordon, Senior Judge, United States District Court for the Western District of Kentucky sitting by designation.

the plaintiff a preliminary injunction which is appealable as a matter of right pursuant to 28 U.S.C. §1292(a)(1).

The case arose out of conflicting requirements of Arkansas and Mississippi with respect to the source from which federal estate taxes should be paid on real estate owned by a decedent. The plaintiff-appellee is the executor of the will of a decedent who died a resident of Arkansas and the owner of real estate in Mississippi. Conflicting rulings by the courts of Arkansas and Mississippi have resulted in the executor's being required to pay a portion of the federal estate tax applicable to the Mississippi real estate from its own funds rather than from the decedent's estate.

On appeal the appellants contend that the court had no jurisdiction under the Federal Interpleader Act because two of the requirements of the Act were not present: that the plaintiff was not holding a "stake" and that there were not adverse claimants to such a stake. They contend that the findings of the district court to the contrary are clearly erroneous and that they were entitled to have their motion to dismiss granted and process quashed for lack of jurisdiction. The appellants also contend that the district court abused its discretion in granting a preliminary injunction.

Upon consideration of the record on appeal together with the briefs and oral arguments of counsel, the court concludes that the findings of the district court are not clearly erroneous and that prejudicial error of law was not committed in denying the motion to dismiss. The court also concludes that the district court did not abuse its discretion in entering a preliminary injunction. This order relates only to matters raised by this interlocutory appeal.

The judgment of the district court is affirmed and the cause remanded for further proceedings.

ENTERED BY ORDER OF THE COURT.

/s/ John P. Hehman, Clerk

ISSUED AS MANDATE: DECEMBER 15, 1980

COSTS: NONE

A TRUE COPY

Attest:
JOHN P. HEHMAN, Clerk

By: /s/ Audrey Crockett
Deputy Clerk